

The Ethics of Selecting a Political Candidate

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Does the halacha permit a Jew to vote for a candidate for public office who is committed to a policy that is in violation of the halacha?

While the government of the United States carefully disassociates itself from the establishment or enhancement of religious practices as mandated by the first amendment to the Constitution, many religious groups have actively involved themselves in the formulation and politics of government policies. The Black churches are hotbeds of political activity and voter registration. Fundamentalist Protestants, united as the Moral Majority, campaign for issues, support political candidates and even have the ear of the President of the United States. The Catholic Church has issued policy statements on poverty and on nuclear arms proliferation and has involved itself, in the person of New York's Archbishop O'Connor, in presidential politics. During the 1984 campaign, O'Connor stated that a Catholic should not vote for a candidate who supported policies contrary to the Church's position on abortion. These religious groups approach their civic responsibilities to the world community motivated by religious convictions.

What about Jews? Does Jewish law motivate and regulate the activities of the Jew towards the general community and towards the government in which he lives?

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This question is easily answered as it relates to the welfare of fellow Jews. Loving one's neighbor, helping the needy, and giving charity are but a few of the fundamental responsibilities which maintain the very fabric of the Jewish community. These obligations, however, are technically, and in the first instance, limited to fellow Jews.¹ Is there a halachic imperative for the Jew to concern himself with the ethical behavior of the non-Jewish society in which he lives? Is there a halachic norm for Jews parallel to Archbishop O'Connor's prohibition for his parishioners? Can a Jew vote for a candidate who advocates an anti-halachic position?

More than just a series of volitional ethical acts and spiritual attitudes, Torah is a divinely revealed legal system of moral and religious behavior. It is the Jew's responsibility to enable the proper fulfillment of the divine will and to prevent its violation. Such prevention is articulated by the Torah through the prohibition, "Thou shalt not place a stumbling block before the blind."²

The *Sifra* there defines blindness not as a physical ailment, but rather as ignorance; and the proscription of placing a stumbling block is taken not literally but metaphorically. Thus:

"Before the blind." Should he ask you: "Is the daughter of so and so qualified to marry a Cohen?" do not answer him "Yes, she is qualified," when she is really unfit. If he comes to consult you do not give him wrong advice. Do not say to him: "Go out early," when robbers would waylay him: "Go out at noon," that he should get sunstroke. Do not say to him: "Sell your field and buy yourself a donkey," and then by a trick take it from him.

The Talmud extends the prohibition to include not only the ignorant, but also the morally obtuse — those who are aware of the

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1. Most of these obligations have been extended to the non-Jewish community because of *darkhei shalom*, the rabbinic imperative to promote harmony within the community, or because of *Kiddush Hashem*, the obligation to sanctify G-d's name.
 2. Leviticus 19:14. Another obligation to prevent transgression is "Thou shalt surely rebuke thy neighbor," Leviticus 19:17. This obligation, however, relates solely to fellow Jews and is not germane to the main subject of this paper.

criminal aspects of their activities. It considers our verse a prohibition of aiding and abetting those who, to quote Maimonides' summary, "have been blinded by the desires of their hearts from seeing the true path."³ Thus, the Talmud cites a *beraita* concerning two cases: that of the Nazirite — one who accepted upon himself certain restrictions such as denying himself wine or other grape products — and that of the non-Jew who, according to halacha, is subject to seven restrictions (the "seven Noachide Laws") which involve the prohibition to eat a limb torn from a living animal:

R. Nathan said: How do we know that a man should not extend a cup of wine to a Nazirite, or the limb from a live animal to a non-Jew? The Torah teaches: "Thou shalt not place a stumbling block before the blind."⁴

The Gemara then elaborates:

Now, were the [forbidden object] not held out for him, he could not take it by himself; nevertheless, the one who hands it to him is guilty of "placing a stumbling block before the blind!" Here we are dealing with the case of two persons on opposite sides of the river.

While R. Nathan extends the stumbling block prohibition to include abetting those who are aware of the illegality of their actions and are prepared to violate the law deliberately, the Gemara restricts the application of this biblical proscription to cases where infraction of the law would have been impossible without the aid of the other party. In the cases cited, the Nazirite, standing on one side of the river, could not have obtained the wine without the help of another who had the wine on the other side and, similarly, the non-Jew would have been unable to obtain the prohibited food. This "two sides of the river" restriction limits the application of the prohibition, permitting one to aid and abet another in his

3. Rambam, *Laws of the Murderer*, 12:14.

4. *Avodah Zarah*, 6b.

transgression if both he and the sinner are on the same side of the river, i.e., if the transgressor could have committed the violation without the accomplice's assistance, or where others were present who could have provided such service.⁵ Both Rashi and Tosafot concur with this conclusion and maintain that we are dealing with a case in which he would not have been able to take the wine if the accomplice did not hand it to him.⁶

While many "aiding and abetting" situations are excluded from the biblical "stumbling block" rule because of the Talmud's "opposite sides of the river" limitation, there are other, rabbinic, prohibitions that do apply, legislation that seeks to deter abetting transgression. Concerning the commandment to let the land lie fallow every seventh year and not to prepare or consume any produce of the Sabbatical year (*Shmitah*) the Mishnah in *Gittin* 61a states:

A woman may lend to another, who is suspected of not observing the Sabbatical year, a fan or a sieve or a handmill or a stove; but she should not grind with her.

It is not lending but grinding that presents a problem.⁷ It is not the "stumbling block" (biblical) rule that applies here, but rather the (rabbinic) prohibition of "strengthening the hands of transgressors"—*ein mechazkin yedei ovrei aveirah*. Similarly, the Mishnah prohibits one to aid another who treads upon or gleans grapes in a state of ritual impurity.⁸

5. A comparison to civil law is of interest. According to *State v. Ramsey*, Mo., 368 S.W. 2d 413, 417, "to aid and abet another to commit a crime, the defendant must in some way associate himself with the venture, must participate in it as something he wishes to bring about, and must seek by his actions to make it succeed." There is no mention of the critical role of the abettor such that without his participation the crime could never have been committed.

6. Tosafot, *Avodah Zarah*, 6b, s.v. *Minayin*. See also Rashi, s.v. *De'kayma bi'trei avrei de'nehara*.

7. The woman is permitted to lend the utensils because of *darkhei shalom*. It does not fall under the prohibition of "strengthening the hands of sinners" because by making the loan she is not abetting the actual act of transgression and we assume that she will use them for permissible purposes.

8. *Avodah Zarah*, 55b

A third relevant rule is the obligation *le'afrushei mei'issura*, to separate another from sin.⁹ This rule goes a step further than the prohibition of "strengthening the hands of transgressors." It requires us to prevent another from sinning. This obligation holds even on "one side of the river," when the transgressor could have accomplished his illegal ends without the intercession of the accomplice.

Differing from this literal interpretation of the Talmud's "two sides of the river" principle are Rambam and the author of *Sefer Ha'chinuch*.¹⁰ In his commentary to the Mishnah which permits, during the Sabbatical year, the sale of equipment which can be used for activities prohibited that year, Rambam explains:

You should not aid one who has been blinded by his desires and evil inclinations by adding to that blindness and by adding to his estrangement from the straight path. Because of this it is forbidden to aid a transgressor.¹¹

Rambam makes no mention of the "two sides of the river" principle, implying that the biblical prohibition of placing a stumbling block is functional even if another person is present to render aid to the transgressor. Of greater significance is that Rambam excludes this principle when he codifies the "stumbling block" prohibition in his *Mishneh Torah*:

It is forbidden to sell weapons of war to heathens. Neither may one sharpen their spears or sell them knives ...

Whatever one is forbidden to sell to a heathen he is likewise forbidden to sell to a Jewish robber because in doing so he is strengthening the hand of the sinner and causing him to sin. Similarly, if one leads astray another who is blinded in a matter by giving him bad advice, or if one encourages a transgressor who is

9. Tosafot, *Shabbat*, 3a, s.v. *Bava De'reisha* maintain that this is a rabbinic prohibition.

10. *Mitzvah* 232.

11. Commentary on the Mishnah, *She'vi'it* 5:6.

“blind” and cannot see the true path because of his heart’s desires, he transgresses a negative commandment, as it is stated, “Thou shalt not place a stumbling block before the blind.” Whoever comes to consult you, give him advice appropriate to his situation.¹²

The omission of the “two sides of the river” principle has already been noted by *Minchat Chinuch* in his observation that neither Rambam nor *Sefer Ha-chinuch* make mention of this requirement.¹³ *Lechem Mishneh* assumes that Rambam holds the “two sides of the river” requirement and he interprets all relevant passages accordingly.¹⁴ *Mishneh Lemelech*, however, avers that Rambam understood the principle differently. He notes, with regard to the law banning the giving or taking of interest, that both the lender and borrower violate the “stumbling block” prohibition by each causing the other to be involved in a prohibited activity, regardless of the availability of other potential lenders or borrowers. He divines the role of the aider and abettor “on the other side of the river” as that of an *integral participant* in the facilitation of the transgression — but not necessarily to the exclusion of other available accomplices. Since the specific illegal transaction under consideration necessarily requires the participation of a lender and a borrower, the “two sides of the river” requirement is fulfilled.¹⁵

This explains why Rambam does not make the witnesses to the transaction automatically culpable for placing a “stumbling block.” If the witnesses are not integral participants in the unlawful loan because the parties are willing to proceed without them, the witnesses have not served as aiders and abettors to the transgression. If, however, the parties insist upon their presence, without which the loan would not take place, the witnesses would be in violation of the biblical injunction.¹⁶

12. Laws of the Murderer, 12:12, 14.

13. *Minchat Chinuch* to *Mitzvah* 232.

14. *Lechem Mishneh*, Laws of the Lender, 4:2.

15. *Mishneh Le'melech*, Laws of the Lender, 4:2.

16. The loan is valid without witnesses. They serve merely to testify to the events

Therefore, according to Rambam, providing a Nazirite with a cup of wine, even if others are in a position to hand it to him and even if he could obtain it himself, is fulfillment of the "two sides of the river" requirement and is prohibited.¹⁷

This "integral participant" principle ascribed to Rambam is actually the view of Rav Ashi expressed in the Talmud, *Nedarim* 62b:

Rav Ashi owned a forest, which he sold to a fire-temple. Said Ravina to Rav Ashi: But there is the injunction, "Thou shalt not place a stumbling block before the blind!" He replied: "Most wood is used for ordinary heating."

Ravina should never have questioned the legality of Rav Ashi's activities because certainly firewood for the idolatrous cult was available from other sources and the "two sides of the river" requirement did not obtain: the wood could have been sold without violating the "stumbling block" prohibition. Nevertheless, Ravina did invoke the injunction. He apparently maintained that Rav Ashi was an integral participant because he was the one to sell the wood to the idolators. Rav Ashi was thus forced to offer a different explanation why the prohibition did not apply.¹⁸

Rav Ashi's explanation further restricts the application of the "stumbling block" prohibition. Ran explains that because the wood was to be used for heating as well as for the pagan ritual, "it is not as if he sold the wood for idolatrous purposes and we deem that it was sold for permissible uses."¹⁹ The Mishnah in *Shevi'it* (5:6)

that occurred. In cases where the witnesses are essential for the act to take place, as in an (illicit) marriage such as a Cohen to a divorcee, the witnesses would be in violation of the "stumbling block" prohibition.

17. Similarly, a Jew who teaches Torah to a non-Jew is always in violation of the "stumbling block" prohibition according to Rambam, regardless of the availability of other teachers. Tosafot, *Chagigah*, 13a, s.v. *Ain Mosrin*, is forced to invoke Psalms 147:19, "He declares His words to Jacob, His laws and His ordinances to Israel" in order to prohibit such instruction when others are available to give lessons.
18. See *Sedei Chemmed*, Vol. 2, p. 296, quoting *Peri Chadash*, *Orach Chayyim* 196.
19. Ran to *Nedarim*, 62b.

articulates the principle that only an object whose use is limited to prohibited purposes may not be sold; whatever may be used for the prohibited as well as the permitted, may be sold. The seller is entitled to assume that the buyer will use the object in a permissible manner, and he bears no responsibility for the transgression if the objects are used illicitly.

Another limitation on the prohibition is that the aid rendered must be a *direct and immediate* "stumbling block" to the act of transgression. Placing a "stumbling block" before one who will, in turn, place a "stumbling block" before a third party is permissible. In this way, *Siftei Cohen* explains the permissibility of selling cultic objects to merchants of pagan religious supplies. The sale of such objects to the merchant is permissible because it is one degree removed from the idolator and thus is not a direct "stumbling block" to the forbidden activity.²⁰

The biblical prohibition of placing a "stumbling block" applies equally to the Jewish and non-Jewish "blind." This is obvious from the Talmud's use of the cases of the Jewish Nazirite and the non-Jewish diner as illustrations of the prohibition.²¹ The question we must address is whether the rabbinic prohibitions of "strengthening the hands of the transgressors" and "separating others from sin" include non-Jews as well. The matter is a subject of controversy among the *Rishonim*.²² The dispute is noted by Ramo in his gloss concerning the sale of religious objects to idolators:

There are those who maintain that the prohibition of selling them [Gentiles] objects related to their worship applies only if they have no other [such cultic objects], or if they are unable to purchase them elsewhere. However, if they can be acquired

20. See *Yoreh De'ah* 151 and *Siftei Kohen*, #3.

21. *Avodah Zarah*, 6b

22. According to *Siftei Kohen* there is no disagreement. He maintains that all agree that one may sell prohibited objects that are available elsewhere to non-Jews and heretics. The stringent opinion, rabbinically banning the sale of available objects, applies only to observant Jews concerning whom one has an obligation

elsewhere, any object may be sold to them. And there are those who are stringent. The custom is to be lenient in accordance with the first opinion. [However,] a religiously refined person should adopt the more severe position for himself.²³

Ramo cites the opinion of Mordechai in support of the former opinion, and that of Ran and Tosafot in support of the latter. Ran and Tosafot maintain that the sale is rabbinically prohibited. Rambam advocates an even more stringent position, considering the transaction biblically forbidden, because the merchant is an integral participant in the sale of the forbidden objects.

When the "integral participant" principle is not met, Rambam maintains that a rabbinic prohibition exists. In his *Laws of the Sabbatical Year*, 8:8, he states:

During the Sabbatical year one may strengthen the hands of the non-Jew with words alone. For example, if one saw [a non-Jew] plowing or sowing he may say to him, "Be strong," or "be successful," etc., because they were not commanded to let the land lie fallow. One may not, however, physically help him.

His statement implies that had non-Jews been forbidden to work the soil during the Sabbatical year, it would have been forbidden for Jews not only to serve as integral participants in the unlawful act, but even to give them words of encouragement.²⁴

Chatam Sofer explains that the rabbinic obligation to "separate another from sin" when the "stumbling block" prohibition is not operative applies only to Jewish subjects because of the moral and religious co-responsibility that Jews share with each other. Non-Jews, however, do not participate in this

to separate from sin. See also *Dagul Me'revavah*, s.v. *Mah she'ein kein*.

23. Ramo, *Yoreh De'ah* 151.1.

24. Similarly in *Robertson v. State*, 125 So. 60, 63 Ala. App. 267, "an aider or abettor is one who advises, counsels, procures or encourages another to commit a crime, whether he is actually present or not at the time the crime is committed."

responsibility, and a Jew is therefore not required to separate them from sin except as biblically dictated by the "stumbling block" prohibition, i.e., when the "two sides of the river" principle obtains.²⁵

Based upon *Chatam Sofer's* explanation, the differing opinions cited by Ramo can now be understood. Is the rabbinic obligation to "separate another from sin," where the biblical "stumbling block" prohibition is inoperative, a function of the principle that "Every Jew is responsible one for the other" — or is it an extension of "Thou shalt not place a stumbling block before the blind?" Those who maintain the lenient position hold that the rabbinic prohibitions are based upon Jewish co-responsibility and are, therefore, not relevant to non-Jews. Those who maintain the stringent view assert that the rabbis meant to include all those to whom the biblical injunction applies, both Jews and non-Jews.

Would a vote for a candidate who supported a position in violation of the seven Noachide laws be halachically proscribed as "placing a stumbling block before the blind?" To focus especially on the recent public issue raised in the Catholic community, may Jews vote for a candidate who explicitly favors abortion?

The Talmud, in the name of R. Ishmael, forbids foeticide for non-Jews as well as Jews. Reading Genesis 9:6 as "who sheddeth the blood of man within man, shall his blood be shed," rather than as "whoso sheddeth the blood of man, by man shall his blood be shed," R. Ishmael asks, "Who is 'a man within a man?' " and answers: "A fetus in the womb of his mother."²⁶ Rambam codifies the prohibition: "A Noachide [i.e., Gentile] who murders a person, even in the womb of its mother, is liable to capital punishment."²⁷

Whether one may vote for a candidate who supports legalized abortion can now be evaluated in light of the above discussion.

Because abortions are now legal and widely available in hospitals and clinics throughout the land, the "two sides of the river" principle, according to Rashi and Tosafot, is unfulfilled, and

25. *Chatam Sofer, Yoreh De'ah, Responsum 19.*

26. *Sanhedrin, 57b.*

27. *Laws of Kings, 9:4.*

the "stumbling block" prohibition is thus inoperative. One latter-day authority permits a Jewish doctor to administer abortifacient drugs to a non-Jewess when other physicians are available to perform the procedure.²⁸ Rambam, however, would forbid the doctor to administer the drugs, as he is an integral participant in the forbidden activity. According to most opinions, the biblical prohibition does not apply and, because the subjects are non-Jews, the rabbinic prohibitions are inoperative in accordance with Ramo's lenient ruling.

However, even according to Rambam and those who maintain the stringent view on the application of the rabbinic prohibitions to non-Jewish subjects, one could still vote for a pro-abortion candidate without violating the "stumbling block" prohibition. This is so because it is a second degree and not an immediate and direct placing of a "stumbling block." The act of voting is actually "placing a stumbling block" before the candidate, and it is only he who will, subsequently, place a "stumbling block" before the doctor. To vote for such a candidate is, therefore, not prohibited.

Another *Acharon* maintains that the prohibition of "placing a stumbling block" before, for example, a non-Jewish murderer, is applicable only when the Jew provides him with the actual murder weapon. Creating a situation which will in turn lead to murder, while not in violation of the "stumbling block" law, is nevertheless prohibited by the verse, "Thou shalt not place blood within thy house."²⁹ However, this applies only to Jewish subjects.³⁰ The election of a candidate, at most, only creates the possibility for abortion to be performed and it is, therefore, permitted to vote for such a non-Jewish candidate. Furthermore, the election of a Jewish candidate is proscribed by this rabbi only when *hezeikah bari*, the violation is certain to occur and in which the injunction "Thou shalt not murder," a prohibition irrelevant to our discussion, is violated.

We must yet consider another of the seven Noachide

28. See *Tiferet Adam*, quoted in *Sedei Chemmed*, Vol. 2, p. 298.

29. Deuteronomy 22:8.

30. *Sedei Chemmed*, Vol. 2, p. 297.

commandments: the obligation to establish a system of law and justice. The Talmud states:

Just as Israel was commanded to establish courts in every district and in every city, so were Noachides commanded to establish courts in every district and in every city.³¹

There is a difference of opinion as to the nature of the laws which the Torah requires these non-Jewish courts to establish and enforce. Rambam states:

What is the nature of the obligation to establish law? They are obligated to appoint judges and policemen to enforce the other six [Noachide] commandments.³²

Ramban, in his commentary on Genesis 34:13, explains that the obligation to establish laws is not restricted to the enforcement of the other six Noachide commandments, but also includes the obligation to establish a legal system which would protect the general welfare of society in business and in interpersonal matters. Both Rambam and Ramban would agree that non-Jews are in violation of their obligation to establish laws if they pass legislation that permits abortion on demand.

We may now summarize:

Even were we to assume that a candidate ran solely on the platform of legalized abortion on demand and would therefore, if elected, potentially be in violation of the Noachide commandment to establish laws, a vote in his behalf would be permissible. The requirements of the "two sides of the river" principle are not fulfilled either because there are others voting for the candidate, electing him to office or, according to Rambam, the candidate would have been elected without the individual's vote and no one voter, therefore, is integrally necessary for the victory of the candidate. Rabbinically, however, according to those who maintain the stringent position and according to Rambam who prohibits

31. *Sanhedrin*, 56b.

32. *Laws of Kings*, 9:14.

even mere words of encouragement, such a vote would be prohibited.

Nevertheless, candidates do not run on one-issue platforms. They support many social and economic issues which conform to or enhance Jewish or Noachide law. The position of Rav Ashi who sold wood to the fire-temple because it was to be used for both permissible and prohibited purposes is most relevant. A vote for a candidate who advocates legalized abortion is also a vote for one who supports many permissible and preferred positions. One would therefore be permitted to vote for him.

In areas in which high density Jewish populations constitute large and influential voting blocks, the above contention concerning the ineffectiveness of the individual's vote may not apply. Voting as a unified community, these Jews can have an effective impact upon the results of an election. All relevant sources, however, indicate that the "stumbling block" prohibition restricts the behavior of an *individual* as he relates to others and does not apply on a communal level.

Even were we to extend the prohibition to the community qua community, voting for the candidate in question would not be halachically proscribed. Three other arguments obtain:

1) Because the candidate will not personally perform the objectionable activity, voting is not a direct and immediate "stumbling block."

2) The elected official will not enact the legislation by himself. He must participate in a process which involves other legislators and executives. Even the legislator himself does not fulfill the "two sides of the river" requirement and, therefore, does not violate the "stumbling block" prohibition—how much more does this pertain to the electors.

3) Candidates run on multi-issue platforms. Rav Ashi's position, allowing activity which abets combined prohibited and permitted pursuits, maintains.

While the "stumbling block" prohibition does not apply, it is pertinent to consider other mandates which obligate the community as a whole to act in a particular manner. Let us evaluate such commandments as the destruction of idolatrous cities, the

eradication of Amalek, and the appointment of a king. These communal commandments do not obligate any one individual to initiate any behavior or to act in any manner—except in response to the Sanhedrin or the King upon whom execution of the obligation falls. Rambam states in *Laws of Kings* 5:2 that the king “need not gain permission of the court in order to wage an obligatory war. But for an optional war, he can only conscript with the consent of the Great Court of seventy-one.” Today, there being no King and no Sanhedrin, there is no process by which to mandate such communal activity.

There are instances in which the members of a community can oblige each other to act for the welfare of that community. These instances include the collection and distribution of charitable monies, the assurance of public security, and the acquisition of religious objects.³³ The issues involved, however, are solely monetary matters and the community is so empowered because of “*hefker beit din hefker*,” the court’s authority to reassign public funds. There is, however, no authority that can prohibit Jews from halachically voting for a specific candidate, regardless of the constitution of the constituency or of the issues involved.

33. See *Baba Batra* 7b and *Laws of Neighbors*, chapter 6.